

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING**

June 2, 2009

7:00 p.m.

Present at the 7:00 p.m. meeting were:

Chairman: James Bowman

Commissioners Present: Peggy Brown
Rob Osborne
Kass Sheedy

Commissioners Absent: Ralph Begleiter
Angela Dressel
Mary Lou McDowell

Staff Present: Roy H. Lopata, Planning and Development Director

Chairman James Bowman called the Planning Commission meeting to order at 7:00 p.m.

1. THE MINUTES OF THE MAY 5, 2009 PLANNING COMMISSION MEETING.

MOTION BY SHEEDY, SECONDED BY OSBORNE, THE MINUTES OF THE MAY 5, 2009 PLANNING COMMISSION MEETING WERE APPROVED AS RECEIVED.

VOTE: 4-0

AYE: BOWMAN, BROWN, OSBORNE, SHEEDY

NAY: NONE

ABSENT: BEGLEITER, DRESSEL, McDOWELL

MOTION PASSED UNANIMOUSLY

2. REVIEW AND CONSIDERATION OF THE ANNEXATION OF THE .86 ACRE PROPERTY AT 207 MASON DRIVE WITH RH (SINGLE FAMILY, DETACHED) ZONING AND THE ADJOINING .25 ACRE MASON DRIVE RIGHT-OF-WAY.

Mr. Lopata summarized his report to the Planning Commission that reads as follows:

“On April 23, 2009, the Planning and Development Department received an application from Joseph O’Donnell and Deborah Gans-O’Donnell for the annexation of their .86 property at 207 Mason Drive in Christine Manor. The property is across Mason Drive from the properties at 1004 Lakeside Drive [tax parcel 18-011.00-105] and 1005 Lakeside Drive [tax parcel 18-011.00-106], previously annexed to the City. The applicants are requesting annexation primarily to make sanitary sewer service available to their vacant parcel, adjacent to their home at 303 Mason Drive. To correspond to the development pattern in the area and the proposed single family development, the property should be zoned RH (single family, detached) - the City’s half acre minimum lot size zoning category. In addition, to simplify Newark police service, the Planning and Development Department also suggests that this annexation include the full width of the Mason Drive right-of-way.

Please see the attached annexation site plan, applicants' letter, and Planning and Development Department Exhibit A, dated June 2, 2009.

The Planning and Development Department's report on this annexation follows:

Development Proposal

A schematic layout of a possible single family home is shown for illustrative purposes on the 207 Mason Drive annexation site plan. If annexed, any building permit plan would be required to conform to all City Zoning and related Code requirements, including limiting this site to one single family dwelling.

Existing Conditions in the Area

The 207 Mason Drive property and the adjoining Christine Manor parcels in the County are all zoned NC21. The 207 Mason Drive property is a vacant wooded lot. The other nearby Christine Manor parcels contain single family dwellings.

All the Christine Manor properties recently annexed to the City are zoned RH.

Planning Studies

The recently updated Newark Comprehensive Development Plan IV calls for "single family residential (low density)" land uses in Christine Manor. The Planning and Development Department's proposed RH zoning for this Mason Drive parcel, therefore, conforms to the City's land use recommendations for this location.

Zoning

The NC21 zoning at Christine Manor is a residential New Castle County zone intended to preserve the character of "existing neighborhoods." The proposed RH Newark zoning for this Christine Manor property permits the following:

- A. One-family detached dwelling.
- B. The taking of non-transient boarders or roomers in a one-family dwelling by an owner-occupant family resident on the premises, provided there is no display or advertising on the premises in connection with such use and provided there are not more than three boarders or roomers in any one-family dwelling. An owner-occupant taking in more than two boarders, however, must apply for and receive a rental permit.
- C. The taking of nontransient boarders or roomers in a one-family dwelling by a non-owner occupant family resident on the premises, is not a use a matter of right, but is a conditional use, provided there is no display or advertising on the premises in connection with such use, provided there are not more than two boarders or roomers in any one-family dwelling, with special requirements including the requirement for rental permits.
- D. Churches or other places of worship, with special requirements.
- E. Public and Private Schools.
- F. Municipal Parks and Playgrounds; non-profit community centers for recreational purposes.
- G. Municipal utilities; street rights-of-way.
- H. Public and private swimming pools.
- I. Temporary construction and real estate buildings.
- J. Private garages as accessory uses.
- K. Other accessory uses and accessory buildings, excluding semi-trailers and similar vehicles for storage of property.
- L. Cluster development subject to Site Plan Approval as provided in Article XXVII.
- M. Public transportation bus stops.
- N. Bed and breakfast, with special requirements
- O. Student Homes, with special requirements

RH zoning also permits, with a Council-granted special use permit, the following:

- A. Police, fire stations, library, museum, and art gallery.
- B. Country club, golf course, with special requirements.
- C. Professional offices in residential dwellings for the resident-owner of single-family dwellings, with special requirements.
- D. Customary home occupations, with special requirements.
- E. Electric and gas substations, with special requirements.
- F. Day care centers, kindergartens, preschools, with special requirements.
- G. Public transportation bus or transit shelters.
- H. Swimming club, private (nonprofit).

Providing Service

The Water and Wastewater Department indicates that sanitary sewer service and, if requested, water main connections can be made available to this Mason Drive site. The applicants will be required to pay all costs for extending utility mains and required laterals.

Please note, that because of the location of this property, if water service is eventually requested, water pressure may be low. Therefore, in order to ensure appropriate water pressure, a private in-house water booster pump may be required.

Because of the remote location of these properties, City electric service, refuse collection, snow removal and leaf collection will not be provided at this time. If City electric service is eventually made available and other properties in the Christine Manor area are annexed, public works services not being made available at this time may be provided. An annexation agreement for this property will be required to stipulate that if a home is connected in the future to the City's electrical distribution system, it will be at the expense of the property owner and at the sole discretion of the City. All other related costs concerning cable and phone service will also be at the property owner's expense.

Regarding roadways, the Public Works Department notes that as part of this annexation, the property owner will be required to pay a proportionate share of any future City upgrades or street widening of Mason Drive for the possible installation of curbs, storm sewers or sidewalks.

Finally, of course, any construction at the site would need to conform to all applicable City Building Code requirements including the requirement for sprinklering of the proposed home.

Recommendation

Because the proposed annexation of 207 Mason Drive and the adjoining street right-of-way does not conflict with the purposes and land use recommendations of Newark Comprehensive Development Plan IV, because the continuation of single family zoning and the construction of a single family dwelling will not have a negative impact upon adjoining properties and the nearby community, and in light of the request to provide sanitary sewer service to this location, the Planning and Development Department suggests that **the Planning Commission recommend that City Council approve the annexation of the .86 acre 207 Mason Drive property and the adjoining .25 acre Mason Drive right-of-way, with RH zoning, as shown on the attached Planning and Development Department Exhibit A, dated June 2, 2009, with the following conditions:**

- A. The applicants agree to a recordable annexation agreement to be appended to the property deed that will stipulate that City leaf collection, snow removal and refuse collection will not be provided at this time, and that if City electric service is provided, it will be at the property owner's expense. Provision for these services will be at the sole discretion of the City. All cable television and phone service costs will be at the property owner's expense.**

B. The applicants agree to a recordable annexation agreement to be appended to the property deed that will stipulate that if Mason Drive is upgraded or widened and/or curbs, storm sewers and sidewalks installed, the cost will be shared on a proportionate basis by the property owner. All such upgrading, widening, or installation shall be at the sole discretion of the City.”

Mr. James Bowman: Do any members of the Commission have any questions for Roy? If not, if the applicant is here and wishes to make any comments, please step to the microphone and state your name and address if you so choose. If not, we will open it for public comment. I have one written request from Marion Shirkey.

Ms. Marion Shirkey: I live at 1003 Lakeside Drive in Christine Manor. I am here tonight representing myself and the residents of 1004 Lakeside (James and Patricia Glanden), and 1005 Lakeside (Henry and Jane Lee). All of our properties were annexed into the City of Newark in December of 2004, mainly for the purpose of sewer and water service. Those two other residents were unable to attend tonight so hence, I am the spokes person for this group. Let me state first and foremost that we are not against annexation. We welcome the annexation. We are here just to enter on the records our concern about the property's connection to the sewer and water lines that run along Lakeside Drive. After consideration of the expense incurred by us installing these lines and without the new owners proportionately participating in that expense, our total expenses for both water and sewer, not counting the lateral line expenses we had pay, were \$138,880. The City of Newark did not pay one penny of this cost, nor did they participate in a search for or contracts with the surveyors and the excavation contractors. Their only role was to inspect and to see that the installation was carried out to meet the City's specifications. The footage that we paid for the sewer lines was approximately 810 feet; the footage for the water lines was approximately 1,000 feet to the property that comes within roughly 215 feet of the Mason Drive line. It is our belief and contention that it would be grossly unfair and unjust and inequitable for 207 Mason to hook into the existing lines and pay only for that 238 feet. The water, by-the-way, is 161 feet from the Mason Drive property and the sewer is 215 feet. These lines are not at capacity. There is no other property connected to these lines. We don't believe that they should get a free pass; and we believe that they should pay a proportionate amount of our original cost. So, we are asking the City to put it on record that we would ask the 207 Mason to pay a proportionate cost of these lines.

We know, of course, that the City of Newark has specifications that have to be adhered to for installing the lines. The sewer connection began at roughly the corner of Dixon and Valley Roads and came around to Lakeside Drive and on up to almost within 215 feet of the Mason property. The water connected up with Georgian Circle at #6 Georgian and that is roughly another 200 or 300 feet.

All the bills came directly to us via James Glanden and we paid them from a special bank account that we set up. Eventually, three additional residents joined with us to connect to the water. 2002 Lakeside, 1 and 2 Georgian Circle, all payments for all of the cost came from six residents. It was our understanding from conversations with Roy Simonson of the Newark Water and Wastewater Department and also his predecessor that should other properties later connect to these water and sewer lines, it was customary for those who have paid all expenses to be reimbursed for some of the expenses on a proportionate basis. The City would determine that proportion when they hooked up and in turn get the money from them and then reimburse those who had already paid. As indicated, I have been the designated spokesperson and have been since we started this. As such, I have met with Mr. Simonson on a number of occasions to talk about the reimbursement. The first meeting was in June of 2008. He explained the process and indicated that this would include any extension along Valley Road and Mason Drive as long as the number of hookups did not exceed (inaudible). An agreement between the City and those of us who made the payments would be drawn up and we would sign it. Subsequent emails and meetings I have edited and revised the agreement. Mr. Simonson edited and revised mine and we bounced back and forth. At our last meeting with Mr. Simonson in December, 2008, he excluded any reimbursement to us should anyone on Mason Drive connect with the water and sewer lines. He was only allowing us reimbursement if 1001 Lakeside (inaudible). We don't understand this exclusion and the only explanation that I could discern from him was – and this is the best I can quote him at this time – that it was too complicated. His version of the agreement was to be written up and given to us to sign. As far as being too complicated to figure out

what the reimbursement is, I personally calculated all of the reimbursements, all of the payments for all of the bills we received for a solid years from both of these contractors. As of today, Mr. Simonson has sent no agreement to us to sign and we have not signed any agreement.

But, the bottom line is that we continue to strongly believe that some proportionate reimbursement is a just and equitable thing to do and we urge the City of Newark to do that.

Mr. Bowman: Thank you. Roy are you in the best position to respond to this?

Mr. Lopata: I knew something about this issue and it is somewhat immaterial in terms of this annexation. But it is going to have to be resolved one way or another before the hookups actually occur. What the annexation does is give the annexing property owner the ability to hook up to the City sewer. It does not actually guarantee them the sewer if it isn't there. So, these issues, which the other Roy and I have talked about, are still out there. Although Marion thinks they are not complicated, they are too complicated for me to try to explain at this point.

We recommended that you go ahead with this annexation. This issue needs to be resolved as we go forward. It may not be resolved to all the parties' satisfaction, but whether or not they are in the City is immaterial in terms of this issue. That is the point that you need to understand as Commissioners. You are not asked to make a decision one way or the other regarding these costs because it is both a technical and a Code matter and that is something that the City will have to decide.

Mr. Bowman: That helps a lot. I think it helps the Commission understand what bearing this has (if any) on the actual annexation.

Mr. Lopata: But, I think it is important to get that on the record and I do appreciate that, so you understand that there is an issue out there.

Mrs. Jean White: 103 Radcliffe Drive. First of all, I have no position on this matter. It is perfectly reasonable thing to connect. I just have two items of clarification. As I understand it, looking at the map, the applicants themselves are not outside the city. Is that correct? They are not asking for annexation for their own property but for the one next door.

Mr. Lopata: It is for their own property, not the one they live on. It is a vacant property.

Mrs. White: It is their property but a vacant property?

Mr. Lopata: Correct.

Mrs. White: When I was looking at the Planning and Development Department report, on Page 3 where it is making clear what services would come or not come with this, it is stated under Providing Serves, "Because of the remote location of this property City electric service, refuse collection, snow removal and leaf collection will not be provided at this time. If City electric service is eventually made available and other properties in Christina Manor . . ." and then when it gets to the recommendations and conditions, it says, "the applicant agrees to have a recordable plan agreement to be appended to the property deed that will stipulate that City leaf collection, snow removal and refuse collection will not be provided at this time . . ." It does by implication say that electric won't be either but it seemed to me to be parallel to what must be the page before, one should insert electric service so it would read, although as you go down further it gets to it, but it would be better to state . . .

Mr. Lopata: Mrs. White, the language there is identical of what we used for all the Christine Manor annexations so I don't want to change that.

Mrs. White: Nevertheless, I felt that it was much more clear (inaudible).

Mr. Lopata: It is a different category. There is a reason it is not mentioned that way.

Mrs. White: It wasn't clear. It almost sounded like it could happen any time rather than some future plan. Thank you very much.

Mr. Bowman: Is there anyone else who wishes to speak to this item? If not, we will bring it back to the Commission for a motion.

Ms. Sheedy: Mr. Chairman, may I ask a question before we do that. Roy, on page #3 of the Planning and Development Department report, it says that the applicants will be required to pay all costs for extending the utility mains and required laterals. Does that by its nature define what kind of agreement is going to be made or does this mean that at least they will be required to pay?

Mr. Lopata: They will be required to pay for the extension. The issue here is the other owners paid for a very lengthy extension to their property so there is a question as to what is the proportionate share.

Ms. Sheedy: My question is, does this sentence exclude the applicants paying for any of the proportional share of bringing the line out to that area?

Mr. Lopata: No. The definition of proportionate is still up in the air.

Ms. Brown: Was there a verbal promise made to the other residents?

Mr. Lopata: No. There is some disagreement as to what was understood. Let me make one thing absolutely clear. It is all voluntary. We don't make anyone pay for anything they don't want to pay for. The question is the reimbursement issue and it is absolutely true that people hooking up in the future to sewer and water lines are often charged both in this jurisdiction and many others. It is not unusual. The question is who gets charged, and that, I think, is what Roy is wrestling with – what is fair in these circumstances. I am not going to begin to try to explain his reasoning.

Ms. Brown: It is just a matter of fairness and being a good neighbor.

Mr. Bowman: And keep in mind that it has nothing to do with any annexation per se.

MOTION BY OSBORNE, SECONDED BY SHEEDY THAT THE PLANNING COMMISSION RECOMMENDS THAT CITY COUNCIL APPROVE THE ANNEXATION OF THE .86 ACRE 207 MASON DRIVE PROPERTY AND THE ADJOINING .25 ACRE MASON DRIVE RIGHT-OF-WAY, WITH RH ZONING, AS SHOWN ON THE ATTACHED PLANNING AND DEVELOPMENT DEPARTMENT EXHIBIT A, DATED JUNE 2, 2009, WITH THE FOLLOWING CONDITIONS:

- A. THE APPLICANTS AGREE TO A RECORDABLE ANNEXATION AGREEMENT TO BE APPENDED TO THE PROPERTY DEED THAT WILL STIPULATE THAT CITY LEAF COLLECTION, SNOW REMOVAL AND REFUSE COLLECTION WILL NOT BE PROVIDED AT THIS TIME, AND THAT IF CITY ELECTRIC SERVICE IS PROVIDED, IT WILL BE AT THE PROPERTY OWNER'S EXPENSE. PROVISION FOR THESE SERVICES WILL BE AT THE SOLE DISCRETION OF THE CITY. ALL CABLE TELEVISION AND PHONE SERVICE COSTS WILL BE AT THE PROPERTY OWNER'S EXPENSE.
- B. THE APPLICANTS AGREE TO A RECORDABLE ANNEXATION AGREEMENT TO BE APPENDED TO THE PROPERTY DEED THAT WILL STIPULATE THAT IF MASON DRIVE IS UPGRADED OR WIDENED AND/OR CURBS, STORM SEWERS AND SIDEWALKS INSTALLED, THE COST WILL BE SHARED ON A PROPORTIONATE BASIS BY THE PROPERTY OWNER. ALL SUCH UPGRADING, WIDENING, OR INSTALLATION SHALL BE AT THE SOLE DISCRETION OF THE CITY.

VOTE: 4-0

AYE: BOWMAN, BROWN, OSBORNE, SHEEDY

NAY: NONE

ABSENT: BEGLEITER, DRESSEL, McDOWELL

MOTION PASSED UNANIMOUSLY

3. REVIEW AND CONSIDERATION OF THE ANNEXATION OF THE 20.5809 ACRE PROPERTY AT 1001 OGLETOWN ROAD WITH MI (GENERAL INDUSTRIAL) ZONING AND THE ADJOINING 2.152 ACRE OGLETOWN ROAD RIGHT-OF-WAY FOR A PROPOSED ARMED FORCES RESERVE CENTER.

Mr. Lopata summarized his report for the Planning Commission which reads as follows:

“On April 20, 2009, the Planning and Development Department received an application from Main PW, LLC, for the annexation of their 20.5809 acre property at 1001 Ogletown Road. The United States Army has indicated its intent to purchase this site for an Armed Forces Reserve Center, if the property is annexed to the City. The property is adjacent to Newark on its western and southern boundaries adjoining the recently annexed Honda Auto dealership property and the VCA Newark Animal Hospital, the 1352 Marrows Road office building and the Campbell Sports Complex. The property is adjacent to the City along its northern boundary across Ogletown Road from the 84 Lumber Company and the Alexander’s Home and Garden Center. As part of the annexation process, the Planning and Development Department recommends that the property should be zoned MI (general industrial); the most appropriate zoning category for this site and the intended use. In addition, in order to simplify Newark police service, the Planning and Development Department also suggests that this annexation should include the appropriate portions of the Ogletown Road right-of-way.

Please see the attached annexation plan, applicant’s attorney’s supporting letter, and Planning and Development Department Exhibit A, dated June 2, 2009.

The Planning and Development Department’s report on this annexation follows:

Development Proposal

On September 8, 2005, the Federal Defense Base Closure and Realignment Commission (known as “BRAC”), recommended Army Reserve and National Guard base realignments and consolidations in New Castle County and their relocation to a new facility in Newark. Because these recommendations were approved by the President and not altered by the United States Congress, they became law on November 9, 2005. As a result, to implement this recommendation, the U.S. Army proposes to construct a new Armed Forces Reserve Center (AFRC) at the 1001 Ogletown Road site.

The AFRC would include an approximately 80,990 sq. ft. 400 member training facility with administrative, educational, assembly, library, learning center, vault, weapon simulator and physical fitness areas for four Army Reserve and two Delaware National Guard units. Associated support facilities will include an approximately 8,000 sq. ft. vehicle maintenance shop and 1,360 sq. ft. storage building. In addition, the AFRC will probably encompass 4.28 acres of paved areas, including 2.5 acres of military equipment parking facilities and 1.8 acres of other parking areas, walkways and access roads.

To accommodate the proposed facilities some or all of the five buildings existing on the site would be demolished prior to construction of the new buildings.

Under the City’s Subdivision and Development Regulations, the AFRC project will be reviewed as a major subdivision once the Army is ready to precede with their proposed construction plans at the 1001 Ogletown Road site.

Existing Conditions in the Area

The proposed AFRC site is a relatively flat developed property in an industrial/commercial area. The lands west and south of the site, in the City, are zoned BC (general commercial) and contain an auto sales facility, office buildings, and a large indoor sports complex. The property east of the site in New Castle County is zoned “I” (industrial) and is occupied by the FMC manufacturing facility. The lands north of the

property, across Ogletown Road, are zoned BC in the City and contain the 84 Lumber retail store and the Alexander's Home and Garden Center.

As part of the U.S. Army's review of this property, a required lengthy environmental assessment has been completed by the Corps of Engineers. The Corps has concluded that the proposed AFRC, "will have no significant direct, indirect, or cumulative adverse effects on the quality of the natural or human environment," at the location under consideration for annexation.

Planning Studies

In terms of comprehensive planning, the recently issued Comprehensive Development Plan IV designates the AFRC site within Planning Area No. Eight for, "manufacturing office/research," and "commercial (auto oriented)," land uses.

Zoning

The "I," zoning at the site is a general industrial zone in New Castle County. The proposed MI zoning, in the City, would permit the following:

- A. Any process involving cleaning, distribution, manufacture, processing, production, warehousing, or testing except manufacture of corrosive acids, gelatin, paint, oils, fertilizer, linoleum, cork products, alcohol, bleaching compounds, or soap; tanning or curing of hides, crude oil refining; rubber treatment of manufacturer; ore smelting; blast furnace; garbage or offal reduction or dumping; asphalt manufacturer or refining; abattoir; junk storage; automobile wrecking; and animal rendering.
- B. Oil storage for wholesale purposes, including pipe lines for transportation of oil and refine products accessory to such storage, provided that no storage above the ground in quantity exceeding 10,000 gallons shall be within 50 feet of any lot line, and that in case of storage above the ground in quantity exceeding 100 thousand gallons, all contain and shall be surrounded adequate moats in accordance with oil industry standards of practice and conforming to underwriters regulations.
- C. Railroad and railroad classifications, freight or storage yard, and all appurtenances thereto.
- D. Public transportation facilities, stations and depots, repair garages and storage areas for busses or related public transit vehicles.
- E. Subsidiary retail sales with special requirements.
- F. Warehouse sales with special requirements.
- G. Accessory uses and accessory buildings, including the repair, installation, and servicing of any commodity distributed, manufactured, processed, produced, or warehoused in this district. Such repair, installation, and servicing must be provided totally within enclosed buildings; outdoor parking and storage of vehicles, products, or other related items in a state of disrepair shall not be permitted.

MI zoning also permits, with a Council granted Special Use Permit, the following:

- A. Tower, broadcasting and telecommunications, subject to special requirements.

The proposed AFRC uses will be permitted within the MI zoning as distribution, warehousing, testing, and accessory uses.

Providing Services

Regarding the specific requirements for utility services, please note that these will be finalized through the required subdivision and development review and approval process that will occur once the U.S. Army has prepared its plans for the Armed Forces Reserve Center at this location. In the meantime, the City Operating Departments note the following:

1. The Electric Department indicates the following:
 - Electric service off-site extensions from Marrows Road or Campbell Drive will be required. The location for these service extensions will be determined through the subdivision process.
 - The applicant for subdivision approval will be required to pay for on and off-site extensions, any easement costs, the cost for the installation of a transformer, and any costs associated with disconnecting from Delmarva Power.
 - An open utility easement for the property will be required through the subdivision process and depending upon loads, the applicant may be required to sign a required electric service agreement.
2. The Water and Wastewater Department indicates the following:
 - Sanitary sewer service can be provided through the existing lateral provided by New Castle County. Coordination with the County will be necessary to verify sanitary sewer capacity. If necessary, however, sanitary sewer service can be redirected through a lift station to the City sanitary sewer service on the north side of Ogletown Road.
 - The Department also notes that water would continue to be provided to the site by United Water. The applicant will need to make arrangements with United Water for this service.
3. The Building Department notes that the development plans will be required to conform to all City Building Code and Fire Code requirements.
4. The Planning and Development and Police Departments note that DelDOT review will be required through the subdivision and development review process for entry and exit approval off Ogletown Road.

Recommendation

Because the proposed 1001 Ogletown Road annexation with MI (general industrial) zoning conforms to the City's land use planning for this location, because the proposed zoning conforms to the development pattern in the adjacent and nearby community, because the potential intended use – the Armed Forces Reserve Center – will be an outstanding asset for the City of Newark, the Planning and Development Department suggests that **the Planning Commission recommend that City Council approve the annexation of the 20.5809 acre property at 1001 Ogletown Road, and the adjoining 2.152 acre Ogletown Road right-of-way with MI zoning, as shown on the attached Planning and Development Department Exhibit A, dated June 2, 2009."**

Mr. Bowman: Are there any questions from the members of the Commission?

Ms. Brown: Roy, who owns this property?

Mr. Lopata: Main PW, LLC. A representative is here.

Ms. Brown: Are they selling the property to the military?

Mr. Lopata: I would think that is what they would prefer to do.

Mr. Bowman: If the applicants are here and wish to step to the microphone, those of you who speak, please state your name and address please.

Ms. Lisa Goodman: Good evening Mr. Chairman and members of the Commission. I am an attorney in Wilmington, Delaware, and I am here representing Main PW, Inc. Mr. John Westerholt is here as a representative of the company who does, in fact, own the property and has owned it for a couple of years. Also with me here this evening is Mr. Mark Zeigler of McBride & Ziegler who are project engineers and are here on behalf of the applicant.

Roy really laid out our case pretty well. Let us flesh out a little bit of the detail. What has come around to you is just a very brief four page exhibit package.

We are here tonight to present this application for the annexation of 20.58 acres. I have included on the first page an aerial photo so that you can see what the property looks like in comparison of what is around it. If you turn to the second page, there is a graphic, which is always helpful for me to see. What you see here is that the areas that are marked in blue represent the City. So, this property is bound on three sides. It is good candidate for an annexation as Mr. Lopata pointed out. It is identified in the City's Comprehensive Plan as a property for potential annexation. So, that all works very well.

As Mr. Lopata indicated, in 2005 the Base Realignment Enclosure Commission, known as BRAC, finished its several years of work and submitted a report to Congress and the Commission's job was to go through state by state, base by base, for all four service areas and recommend closures and realignments for efficiency. We are here tonight as a result of that Commission. That Commission recommended that the Kirkwood Highway Army Reserve Center be closed and that it combined with two Army National Guard units out of Middletown be combined in a new training center and that that training center specifically be located on Newark property. That was a huge benefit to the City. This site is really perfect for them, and my client is in the very, very final stages of negotiating an agreement with the Army.

The Army's funding and procedural rules require that the property be annexed as Mr. Lopata indicated. They provided us with a fairly detailed concept plan of what they believe this is going to look like. If you look at the last page of the handout that I provided you, you will see this is what the army provided us. As Mr. Lopata indicated, they will be back for approval of this or a similar plan. The page immediately before that simply shows you what is on the site today, so that you can compare. What is on the site today is five buildings about 215,000 sq. ft. What the Army is telling us is their main building is going to be about 81,000 sq. ft. and they are going to have an 8,000 sq. ft. vehicle maintenance building and then a 1,300 sq. ft. storage building. That might change somewhat. That is what they are saying right now. I am not at all empowered to make any statements for them. I am simply sharing with you what they have shared with us.

We are pleased to have a very favorable report from Mr. Lopata's recommendation. I am pleased to stand here because I know this is going to be a great asset to the City. The other area's loss in terms of folks coming in for training and thereby patronizing local establishment is certainly in Newark's favor. We are happy to answer any questions.

Mr. Bowman: Are there any questions from members of the Commission?

Mr. Rob Osborne: Did the Army share with you about why they require annexation? I heard you say that their rules and procedures require that the land be annexed.

Ms. Goodman: The answer is no, they have not shared with me. What I did, however, was read through the BRAC report as it relates to Delaware. And the BRAC report's recommendation is to close the Army Reserve Center (Kirkwood Highway) and to relocate the units they are talking about to a facility in Newark, Delaware.

Mr. Osborne: But it doesn't specifically mention being annexed.

Mr. Lopata: If it is not annexed, it is not in Newark. That word "in" is very important.

Ms. Goodman: The Army's funding for this project is tied to compliance with the BRAC recommendation. The estimate that was done by BRAC at the time was that the cost to implement this recommendation was \$13.6 million. That is what I assume they were estimating at the time to be their cost for moving all of those units, building the new facility, etc.

Mr. Osborne: You mentioned that you were here representing Main PW, Inc. What is the relationship of Main PW, Inc. to Main PW, LLC?

Ms. Goodman: I apologize. I misspoke. It is Main PW, LLC.

Ms. Sheedy: I realize that the agreement between the Army and the owners isn't finalized but do you anticipate that the Army will be buying the property rather than leasing it?

Ms. Goodman: Yes, That is the agreement that is being drafted. I am not aware that the Army would be permitted to lease. I believe they are required to own the site. That is certainly the plan.

Ms. Brown: If we approved this annexation for Main PW, LLC and the Army backs out, do they still have their annexation or is there some reason not to let them annex it unless the Army is going to do it?

Mr. Lopata: Our Comprehensive Plan calls for industrial land uses there, so if we were to review another use at this site that would control. Light industrial is there now. That is the kind of use we would favor. In fact, we had some discussions about other uses and the Planning and Development Department is very much in favor of keeping this as an industrial zoned property rather than commercial. We are trying to avoid Ogletown Road becoming a commercial strip.

Do we prefer to do our two procedures together? You are noting, Peggy, the exact reason we do. In this instance, they very much need to get this annexed so they can move forward to the next level. Apparently, that is part of the hang-up here. It has to be in the City, and then they can buy it and then move forward. The worse case scenario is, if for some reason the deal falls through and we have a large area of industrial land that was in the County, it is now in the City. It is already zoned "I" in New Castle County. But the important thing is that we will have control of the site that we would otherwise not have.

Mr. Bowman: I believe that somebody is probably paying taxes on that property right now in the County.

Mr. Lopata: That is correct. They will start paying taxes in the City until the Army takes over.

Ms. Goodman: As Mr. Lopata pointed out, the property is already zoned industrial in the County. He doesn't need to bring it into the City. It is driven purely by the Army's desire, but I think it is to your benefit because even if the Army doesn't accomplish this, which we certainly don't think is going to happen, you will control it.

Mr. Lopata: We will sell electricity there. There is the key ingredient from our standpoint.

Ms. Brown: Even to the military, are the rates the same?

Mr. Lopata: They will pay some kind of institutional or industrial rate. That remains to be seen, but that helps us with our bills. Plus, there are building permit fees and other fees.

Ms. Brown: Now tax wise?

Mr. Lopata: It is tax exempt. We are not getting anything from it now. Remember, it is in the County.

Mr. Osborne: In the context of the earlier conversation about sewer and water and things like that, what is the protocol here? I hear that it is already tied into the County's utility infrastructure, how does that transition work or is there no transition with water or sewer?

Mr. Lopata: There is none because the water is, I think, United Water. It will be private water and it will dump straight into the County sewer system. So, the services we will be providing will be police and our other services, but from a utility standpoint, it will be electric.

Mr. Osborne: Would the owner bear the responsibility of repairing the sewer if it falls into disrepair at some point?

Mr. Lopata: It is all private. Any industrial site would be private.

Mr. Bowman: We will ask for comments from the public. If you wish to comment, please come to the microphone, state your name and address please.

Mrs. Jean White: 103 Radcliffe Drive. I have a series of questions. Would the electric come from the City?

Mr. Lopata: Yes.

Mrs. White: So, that in terms of the financial benefit to the City is specifically (inaudible)

Mr. Lopata: We have a few other industrial sites on the City's outskirts where the services are either private or to United Water or directly into the County. This is not the only site like it.

Mrs. White: I know that, but the ones I am thinking about actually are not tax exempt properties.

Mr. Lopata: Right.

Mrs. White: In this case it is understandably tax exempt, but in terms of the money that (inaudible).

Mr. Lopata: And other fees that we charge. Building permit fees, for example.

Mrs. White: I was just curious whether what is there now, which is a set of buildings, parking lots and driveways, and what will be there, will there be a change in the impervious surface? The second thing has to do with use. Will there be firearms, will there be target practice inside or outside, will there be an armory, and will there be combat training? I also wondered what a vault was.

I know that when it is MI zoned, that there is no landscaping required whatsoever, but looking at the conceptual plan, it looks like the front of it has a lot of open space and right now that open space is mostly almost 100% mowed grass.

Mr. Lopata: Mrs. White, we will require landscaping through the subdivision process, especially the parking areas.

Mrs. White: I would hope that under wires (inaudible). Ms. Goodman answered a couple of my questions about what would be relocated here – the Army Reserve on Kirkwood Highway and the two Middletown units – and I wondered, the Army Recruiting Stations that are at 230 E. Main Street and there is one in Wilmington, do they just stay where they are?

Mr. Lopata: I don't think we know.

Mr. Bowman: Mrs. White, some of these questions are not relevant to the annexation.

Mrs. White: But the thing is they will help the applicant to prepare a report because I won't ask again.

Mr. Bowman: Well, that is all well and good, but Mr. Lopata already stated that the Army would come before this body again so, my suggestion would be that you save those questions until they arrive and the military can answer those questions. These folks are not able to answer those questions and I certainly question the relevancy of your question as to whether or not there will be fire arms stored on the property and whether or not there will be combat training on the property. That is sort of the thing that the military does. I don't expect you are going to see people running around on the property shooting at one another. So, I would appreciate it if you would keep the questions to the question of annexation because some of your questions are not relevant to this issue.

Mrs. White: In the past when things have been annexed, the public had the right to ask about the nature of the use, and I realize this is an Army Training Center, but I think the public has the right to ask those questions.

Mr. Bowman: When the military shows up and the proper people are here to answer those questions we will certainly entertain those questions, and I am sure that the members of the military who come here will be able to answer those, but I don't think we need to tie up our time and the rest of the people's time here tonight to try to answer those questions when people who are sitting here don't have the answers.

Mrs. White: In the construction that will happen, what environmental practices will be done in the buildings such as insulation, solar panels, solar power for hot water, reuse of rain water, disposal of waste, building materials? These are things that can save the Army money and I would be interested to know whether these are being considered. I am not asking for the answer now, however, it would be useful.

Mr. Bowman: Bring the question when you come back to the Army and I am sure they will be happy to answer it.

Mr. Kerry Stanley: I own the property across the street from this property. When you take a big portion away from the County, does the City override the County?

Mr. Lopata: It stays in the County. It is not leaving the County. It is not outside the County; it just comes within City limits. If people want to annex and we like the land use, we will go ahead and annex.

Mr. Bowman: Are there any other questions of either the applicant or the Planning and Development Director. If not, the Chair will entertain a motion.

MOTION BY SHEEDY, SECONDED BY OSBORNE THAT THE PLANNING COMMISSION RECOMMENDS THAT CITY COUNCIL APPROVE THE ANNEXATION OF THE 20.5809 ACRE PROPERTY AT 1001 OGLETOWN ROAD, AND THE ADJOINING 2.152 ACRE OGLETOWN ROAD RIGHT-OF-WAY WITH MI ZONING, AS SHOWN ON THE ATTACHED PLANNING AND DEVELOPMENT DEPARTMENT EXHIBIT A, DATED JUNE 2, 2009.

VOTE: 4-0

AYE: BOWMAN, BROWN, OSBORNE, SHEEDY

NAY: NONE

ABSENT: BEGLEITER, DRESSEL, McDOWELL

MOTION PASSED UNANIMOUSLY

4. REVIEW AND CONSIDERATION OF A PARKING WAIVER AND SPECIAL USE PERMIT FOR A CAFETERIA STYLE CHIPOTLE GRILL RESTAURANT AT 136 E. MAIN STREET.

Mr. Lopata summarized his report to the Planning Commission which reads as follows:

“On April 23, 2009, the Planning and Development Department received applications from Chipotle Mexican Grill of Colorado, LLC, for a special use permit and parking waiver for the property at 136 E. Main Street. The applicants are requesting a BB zoning required special use permit for a “cafeteria-style” restaurant and a 30 space parking waiver. The vacant 136 E. Main Street property was previously occupied by the Copy Maven. As you can see from the initial applicant’s attorney’s letter, dated April 23, 2009, the original submittal was intended to include a BB zoning required special use permit for the sale of alcoholic beverages at Chipotle Grill, with an accompanying rear parking lot land dedication to the City in order to make a special use permit for this use Zoning Code compliant. As noted in Mr. Tucker’s second letter, the applicants will not be pursuing the alcoholic beverage special use permit at this time.

Please see the attached Chipotle Grill site and floor plans, building elevation drawings, applicant’s supporting letters, and site surveys.

The Planning and Development Department’s report on the Chipotle Grill project follows:

Property Description and Related Data

1. Location:

North side of E. Main Street, approximately 175 feet east of the E. Main and Center Streets intersection; between Panera Bread and Margherita’s Pizza.

2. Size:

Total site: .2253 acres.

Building Size: 5,400 square feet.

3. Existing Land Use:

Vacant commercial site.

4. Physical Condition of the Site:

136 E. Main Street is a developed site, including a one story commercial building and a small, leased to the City, parking area.

5. Planning and Zoning:

136 E. Main Street is zoned BB. BB is our central business district zone that permits the following:

- A. Retail and specialty stores.
- B. Retail food stores up to 5,000 square feet in maximum floor area, with special conditions.
- C. Restaurants, bakery and delicatessens.
- D. Banks and finance institutions.
- E. Offices for professional services and administrative activities.
- F. Personal service establishments.
- G. Studios for artists, designers, photographers, musicians, and sculptors.
- H. Repair and servicing, indoor and off-site of any article for sale, which is permitted in this district.
- I. Related indoor storage facilities as accessory uses with special requirements.
- J. Accessory uses and accessory buildings.
- K. Public parking garage and parking lot.
- L. Public transit facilities.

- M. Social club, fraternal, social service, union and civic organizations, except on ground floor locations.
- N. Photo developing and finishing.

BB also permits, with a Council granted Special Use Permit, the following:

- A. Retail food stores with more than 5,000 square feet in area.
- B. Drive-in and curb service for other than eating establishments.
- C. Fast-food restaurants with special requirements.
- D. Motels and hotels.
- E. Commercial in-door recreation and in-door theaters.
- F. Instructional, business or trade schools.
- G. Electric gas and telephone central offices and telephone central offices and substations with special requirements.
- H. Tower, broadcasting or telecommunications on existing buildings or structures with special requirements.
- I. Police and fire stations.
- J. Library, museum and art gallery.
- K. Church or other place of worship.
- L. Restaurant, cafeteria style.
- M. Apartments, except on ground floor locations, with special requirements.
- N. Restaurants with alcoholic beverages, with special requirements.

Regarding BB zoning area requirements, except for off-street parking, the Chipotle Grill restaurant development plan meets all the applicable stipulations.

Regarding adjacent and nearby properties, the land to the north of the 136 E. Main Street property is zoned RS and contains small single family style dwellings. The parcels east and west of the site on the north side and across E. Main Street are zoned BB and contain a variety of commercial uses.

Regarding comprehensive planning, the Newark Comprehensive Development Plan IV calls for, “commercial (pedestrian oriented)” uses at the 136 E. Main Street location. In addition, the Plan’s Downtown Economic Enhancement Strategy suggests, “Downtown Core District,” for the site described as, “first floor specialty and traditional retail shops with a balanced concentration of food and entertainment.”

BB District Off-Street Parking Option Procedure

The BB district off-street parking waiver program, adopted by the City to encourage quality pedestrian oriented development downtown, stipulates that the Planning Commission can reduce or waive the off-street parking standards in Zoning Code Section 32-45(a) after considering the following:

- “A Whether the applicant has demonstrated the proposed use does not conflict with the purposes of the Comprehensive Development Plan of the City;
- B. Whether the applicant has demonstrated that the proposed use conforms to and is in harmony with the character of the development pattern of the central business district;
- C. Whether the applicant has demonstrated that the proposed use is not highway oriented in character or significantly dependent on automobile or truck traffic as a primary means of conducting business;
- D. That the proposed use will not adversely affect the health or safety of persons residing or working in the vicinity, will be detrimental to the public welfare, or injurious to property improvements in the vicinity;
- E. The Planning Commission may also consider the availability of off-street parking facilities, the availability of nearby adjacent public parking facilities

(within 500 feet) that may be shared by the applicant and an existing or proposed use. In considering this subsection the Planning Commission may require that the applicant submit an appropriate deed restriction, satisfactory to the City, that ensures either the continued validation of and/or the continued use of shared parking spaces in connection with the uses and structures they serve;

- F. The Planning Commission shall consider the advice and recommendation of the Planning Director.

Please note also that the BB zoning parking waiver procedure permits City Council to review, modify, or deny Planning Commission approval, disapproval, or approval with conditions upon the recommendation of a member of City Council, the Planning and Development Director and/or the City Manager.”

Regarding the requested 30 space parking waiver, our procedure specifies that applicants receiving such approvals must make a “lieu of spaces” payment to the City to be used to improve parking downtown. The required payment for the requested waiver, based on a recently updated estimate of the cost of construction of surface level parking spaces provided by the Public Works Department (\$5,833), is as follows:

<u>Number of Spaces</u>	<u>Payment Required</u>
Five (5)	\$ 1,458.25 (5% of Cost)
Six to Twenty-five (25)	<u>\$72,912.50</u> (50% of Cost)
Total:	\$74,370.75

Please see the applicant’s attorney’s supporting letter regarding the required commentary concerning this request for a parking waiver.

Status of the Site Design

Please note that at this stage in the Newark development review process, applicants need only show the general site design of the project. Specific details taking into account topography and other physical features must be included in the building permit plan. Regarding architectural character, applicants for special use permits and/or parking waivers are not required to submit color elevation drawings of their proposed buildings. In this case, however, Chipotle Grill voluntarily submitted the attached color building elevation drawings for the City’s consideration as part of this development review process.

Be that as it may, the Chipotle Grill development plan and supporting letters call for a 60-seat restaurant to be located in the vacant 136 E. Main Street commercial space, previously occupied by the Copy Maven. Twenty-six “seasonal” seats are shown at a front patio, with most of that seating to be installed within the confines of the current building footprint. A new storefront doorway is shown at the rear of the building providing direct restaurant access for patrons to City Parking Lot #4 to the restaurant. The Chipotle Grill plan also calls for a redesigned front façade.

As you can see from the Chipotle Grill supporting documentation, the proposed restaurant will be constructed based on the standards in the Company’s “Sustainable Architecture Program.”

To evaluate the proposed architectural design, the Planning Commission may wish to consult the design review criteria in Municipal Code Chapter 27, Subdivision Development Regulations Appendix XIII(d).

Please note, in this regard, that on a voluntary basis, the applicants reviewed their proposed building elevation drawings with the Downtown Newark Partnership’s Design Review Committee and the Committee indicated that the proposed façade improvements meet the Downtown Design Guidelines. The Committee also noted that the plan showed a “nice” recessed entry and, “represented the reuse of a property that had been vacant for

some time.” The Committee added that adequate lighting should be provided in the recessed entry and suggested a “unique” color, design, and material for the entrance patio floor.

Departmental Comments

The City’s Planning and Operating Departments reviewed the Chipotle Grill plan and provided the comments below. Where appropriate, the special use permit plan should be revised prior to its review by Council. The Departmental comments are as follows:

1. The Planning and Development Department notes that the Chipotle Grill restaurant corresponds to the land use recommendations in Newark Comprehensive Development Plan IV and will occupy a currently vacant downtown commercial space.
2. As a condition of the special use permit, the Planning and Development Department suggests that the Planning Commission recommend that:
 - A. The proposed architectural design for the facades of the building shall be carried out on all renovated building elevations visible from public ways.
 - B. Storage areas, mechanical and all utility hardware shall be screened from view from all public ways and nearby properties in a manner consistent with the proposed architectural design.
3. Prior to the plan’s review by City Council, the applicant must develop a Planning and Development Department Parking Division approved plan for proposed restaurant dumpsters stored in Municipal Lot #4.
4. The Electric Department indicates electric service can be made available to the site.
5. While the Police Department notes the limited parking available on E. Main Street, the Department thinks the property should be occupied for the “benefit to downtown development.”
6. The Building Department indicates that a certificate of occupancy will be required. The Department adds, that because a storefront opening in the existing wall is shown on the west building elevation on the lot line, the applicant should review with the Department related Code requirements.
7. The Water and Wastewater Department indicates that water and sanitary sewer service can be made available for the proposed Chipotle Grill restaurant.

Recommendation

Because the proposed Chipotle Grill restaurant project conforms to the land use recommendations in Newark Comprehensive Development Plan IV, because the proposed use does not conflict with the development pattern in the immediate vicinity of the site, and because the project will occupy an existing vacant downtown storefront, the Planning and Development Department suggests the following:

- A. That the Planning Commission approve the requested 136 E. Main Street parking waiver, as shown on the Chipotle Mexican Grill plans, dated April 21, 2009, with the conditions in this report and,
- B. That the Planning Commission recommend that City Council approve the special use permit for a cafeteria-style restaurant for the Chipotle Grill at 136 E. Main Street, as shown on the Chipotle Mexican Grill plans, dated April 21, 2009, with the conditions in this report.”

Ms. Brown: The footprint of the property does not change at all?

Mr. Lopata: It is identical.

Ms. Brown: No apartments upstairs?

Mr. Lopata: Not this time.

Mr. Shawn Tucker: Good evening Commissioners, Mr. Lopata. For the record my name is Shawn Tucker. I represent the applicant this evening which is Chipotle Grill. Our client will be the tenant of this property. Mr. Lopata indicated that the property is owned by the Danneman family. It has been vacant, I understand from the Dannemans, for some time. Here with me this evening, I have three people; Lisa Drake, who is the real estate manager; their architect, Tiffany Kupper; and their construction manager Andrew Daly to answer questions that may come up.

Mr. Chairman, with your permission we would like to hand out some documents that reflect the exhibits you see.

Ms. Lisa Drake: I reside at 24 ½ School Lane in Ardmore, Pennsylvania 19003. With regard to Chipotle, to give you a little bit of background information, we are in the quick casual dining category also known as fast casual. We are a Mexican Grill concept. What differentiates us from full serve is when you come into one of our stores, you approach a counter and in front of you is all of the different food options. Your food is prepared for you as you walk your way down the line. By the time you get to the end of the line your food is ready. You pay at the register and then you walk to a table. In terms of the concept we are oriented around a theme called, “food with integrity,” which is driven by sustainability. We are very deeply concerned with where our product comes from, how it is raised, we do serve mostly free range meats in our store, a lot of organic produce, we are working closely with using locally raised products as well, which is very important to us. We also build as sustainably as we can utilizing recycled materials and our design being very cognizant of our impact on the environment. From a broader perspective, we are a fairly large national restaurant group. We currently have more than 860 stores open around the country. We have sales in excess of a \$1 billion, market cap just shy of \$2.5 billion. We are publically traded and have been and since January of 2006. This is the first store in the State of Delaware, so we are very excited to be here.

Mr. Bowman: Does anyone have any questions for the applicants?

Ms. Sheedy: I have a statement to make: I think this is the first application that has come before us, at least since I have been on the Planning Commission, that specifically addresses sustainable development and sustainable construction methods, and I applaud you for doing that.

Mr. Tucker: We were going to quickly walk through the standards, however, Mr. Lopata does cover them in his report. If the Board is comfortable with that, we are prepared to move on, but we will be happy to go through those if you like. It is your pleasure.

Mr. Bowman: We will go ahead and open it up to the public then. Does anyone from the public wish to comment? We will bring it back to the table.

Ms. Brown: I was just looking at the back here. Are you going to have people coming and going out the back like Panera does also?

Mr. Tucker: That is correct. The municipal parking lot is to our rear so that will be an opportunity for folks to come in from behind it and walk in. The store, just to give you a flavor, if you look at the layout that is in the packet, the back door is going to kind of be a hallway to come in from the rear.

Mr. Brown: What about lighting back there? I only see one light.

Mr. Tucker: I am trying to remember. I was back there in the evening and I can't

remember the lights in the municipal parking lot off the top of my head.

Mr. Lopata: We think it is pretty well lit.

Ms. Brown: What are your hours of operation?

Ms. Drake: We are open from 11:00 a.m. until 10:00 p.m. seven days a week.

Ms. Brown: My last question is, how many of your facilities in the U.S. serve alcohol?

Ms. Drake: Fewer than 70%. Alcohol is very much an incidental component of our business. The stores that do serve alcohol, they only serve three different beers and margarites. With sales collected they represent less than 1% (inaudible).

Mr. Lopata: There won't be alcohol here under the current Zoning Code requirements.

Mr. Tucker: We will not be going ahead with the alcohol permit.

Ms. Brown: I am aware of that. It is just that I know applicants in the past have gone ahead and then afterwards have applied for an alcohol permit so I'm questioning it.

Mr. Tucker: What is driving this for us is we have a zoning conflict. Originally, when we looked on Parcel View, it looked like we could propose alcohol use because of the zoning of the parcel identified behind us. However, the official maps of the City indicated a different zoning. So, it is actually prohibited by Code, unless something else were to happen.

Ms. Brown: And, the 30% who don't have alcohol, how successful are they?

Ms. Drake: Extremely successful. As a matter of fact, I cover the states of Pennsylvania, New Jersey and Delaware and none of my stores have alcohol because the cost of licenses in at least New Jersey is definitely cost prohibitive and doesn't adversely impact us.

Ms. Brown: On average, how long have those stores been in operation?

Ms. Drake: Between one and three years. We just started opening up the Philadelphia market about a year and a half ago, and central New Jersey region about two and a half to three years ago.

Mr. Lopata: I might point out – Chipotle might not like to hear me say this – their closest competitor, California Tortilla on Main Street, does not have alcohol. If you sort of look at them as that type of facility.

Mr. Bowman: If there are no further questions, the Chair will entertain a motion.

MOTION BY OSBORNE, SECONDED BY BROWN THAT THE PLANNING COMMISSION:

- A. APPROVES THE REQUESTED 136 E. MAIN STREET PARKING WAIVER, AS SHOWN ON THE CHIPOTLE MEXICAN GRILL PLANS, DATED APRIL 21, 2009, WITH THE CONDITIONS IN THIS REPORT AND,
- B. THAT THE PLANNING COMMISSION RECOMMENDS THAT CITY COUNCIL APPROVE THE SPECIAL USE PERMIT FOR A CAFETERIA-STYLE RESTAURANT FOR THE CHIPOTLE GRILL AT 136 E. MAIN STREET, AS SHOWN ON THE CHIPOTLE MEXICAN GRILL PLANS, DATED APRIL 21, 2009, WITH THE CONDITIONS IN THIS REPORT.

VOTE: 4-0

AYE: BOWMAN, BROWN, OSBORNE, SHEEDY
NAY: NONE
ABSENT: BEGLEITER, DRESSEL, McDOWELL

MOTION PASSED UNANIMOUSLY

There being no further business the Planning Commission meeting adjourned at 8:00 p.m.

Respectfully Submitted,

Elizabeth Dowell
Secretary, Planning Commission